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In re Application of :
Tellier et al. :
Serial No.: 10/522,161 :
Filed: September 30, 2005 :
Attorney Docket No.: 0512-1258 :

:DECISION ON PETITION

This letter is in response to the Petition under 37 C.F.R. 1.1.181 filed on September 24, 2009 requesting withdrawal of the Finality of the Office Action of June 24, 2009.

BACKGROUND

Applicant filed a Request for Continued Examination accompanied by a declaration under 37 CFR §1.132 on March 31, 2009. In response to this request the Examiner mailed out a first action Final rejection on June 24, 2009. It was the Examiner's position that:

All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application.

Applicant sets forth a summary of a telephone interview which took place on January 29, 2009 in which the filing of a declaration under 37 CFR §1.132 was discussed. Applicant states that the examiner indicated that such a declaration would not be considered without the filing of a Request for Continued Examination. In the response of March 31, 2009 applicant further notes that the Examiner indicated that the declaration would require further consideration and/or search.

There is no Interview Summary in the case setting forth the discussion of January 29, 2009.

DISCUSSION

Had applicant filed the declaration under 37 CFR §1.132 as part of a request for reconsideration of the Final rejection of December 31, 2008 it appears that it would not have been entered. Thus, to hasten prosecution applicant elected to proceed to file a Request for Continued Examination.

It is clearly set forth in MPEP §707.07(b) that

However, it would not be proper to make final a first Office action in a continuing or substitute application >or an RCE< where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised.

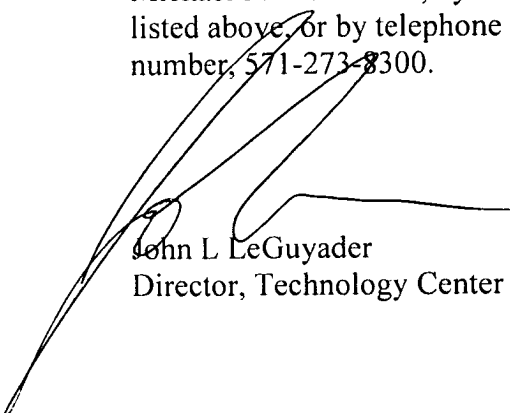
However, the reasons for denying entry of a declaration are set forth in 37 CFR §1.116 (e). It is noted that the reasons set forth for denying entry of such a declaration do not included that it requires further consideration and/or search. It is required that the declaration be filed with good and sufficient reasons as to why it is necessary and was not earlier presented.

The record in this application regarding the "proposed declaration" discussed in the Interview of January 29, 2009 is equivocal.

DECISION

The petition is **GRANTED** for the reasons set forth above.

Should there be any questions about this decision, please contact Quality Assurance Specialist Michael P. Woodward, by letter addressed to Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-8373 or by facsimile sent to the general Office facsimile number, 571-273-8300.



John L. LeGuyader
Director, Technology Center 1600